

ESTTA Tracking number: **ESTTA610002**

Filing date: **06/16/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91215751
Party	Plaintiff BB Pharmaceuticals, Inc. dba FARMAESTHETICS
Correspondence Address	DANIEL J HOLMANDER BARLOW JOSEPHS & HOLMES LTD 101 DYER STREET , 5TH FLOOR PROVIDENCE, RI 02903 UNITED STATES djh@barjos.com, tm@barjos.com, clc@barjos.com
Submission	Motion for Default Judgment
Filer's Name	Daniel J. Holmander
Filer's e-mail	djh@barjos.com, tm@barjos.com, clc@barjos.com
Signature	/daniel j. holmander/
Date	06/16/2014
Attachments	MotionforDefaultJudgementOppositionExtensionTime.pdf(91595 bytes) Email12-16-2013.pdf(68795 bytes)

)	
BB Pharmaceuticals, Inc. dba)	
Farmaesthetics)	Opposition No. 91215751
Opposer,)	
)	Application S.N.
v.)	85/658,031
)	
Skinny Pineapple, Inc.)	
Applicant)	
)	

Motion for Default Judgment for Failure to Answer

The Board should take note that this matter has been going on for six months or since December 16, 2013. Applicant has been made fully aware of these proceedings and had ample notice to respond. Opposer BB Pharmaceuticals, Inc. dba Farmaesthetics (“Opposer”) originally filed a 90 day extension of time to oppose U.S. Appl. Ser. No. 85/658,031 (‘031 Application) on December 16, 2013 for 90 days or until April 9, 2014.

Immediately upon filing of the 90 day extension, Opposer e-mailed a

letter to Applicant's counsel of record on December 16, 2013 requesting withdrawal of the '031 Application based upon a substantive argument for likelihood of confusion, which was admittedly received by Applicant's counsel of record. (see attached)

On April 4, 2014, Opposer filed its Notice of Opposition and the Board issued an Order setting dates for Applicant to answer by May 14, 2014. On May 13, 2014, **24 hours before the Answer was due**, without consent of Opposer's counsel or even ever contacting Opposer's counsel whatsoever, Applicant's new counsel filed a first, unconsented Request without good cause for Extension of Time to Answer of 30 days or by June 13, 2014, which was granted by the Board. Applicant failed to file the Answer by June 13, 2014 as requested by the Applicant.

Accordingly, Applicant has failed to file an Answer within the time set by the Board and requested by the Applicant. If no answer to a Notice of Opposition is filed within the time set, "the opposition may be decided as in case of default." 37 C.F.R. 2.160(a). Pursuant to TBMP section 508, a plaintiff may bring a Motion for Default Judgment if the defendant does not file a timely answer. And, TBMP section 508 provides that the standard for determining whether default judgment should be entered against the defendant is contained in Fed. R. Civ. P. 55(c), which requires that the

defendant show good cause why default judgment should not be entered against it. Applicant has not shown good cause why default judgment should not be entered against it.

Opposition to Request for Extension of Time to Answer

On June 13, 2014, **24 hours before the Answer was due**, Applicant's counsel, without consent of Opposer's counsel or even ever contacting Opposer's counsel whatsoever, filed a second, unconsented Request for Extension of Time to Answer without good cause for another 14 days or until June 27, 2014 which the Opposer strongly opposes. The Opposer submits that no further extensions of time should be made available to Applicant. Applicant has had six months to prepare for filing an Answer and ample notice of these proceedings and has not shown any good cause for the extensions of time. Also, the Board should note that Applicant's counsel has not once contacted Opposer's counsel or Opposer to seek an extension of time. Therefore, the Opposer submits that the Board should deny Applicant's second, unconsented Request for Extension of Time to Answer submitted on June 13, 2014.

In light of the Applicant's failure to timely respond to the Notice of Opposition, and no justification for failing to answer in a timely manner having been shown, Opposer respectfully requests that default judgment be

entered against Applicant and that the second unconsented, request for extension of time dated June 13, 2014 be denied.

Respectfully submitted,

BB Pharmaceuticals, Inc. (Opposer)

Date: June 16th, 2014

/daniel j. holmander/
Daniel J. Holmander, Esq.
Counsel for Opposer

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **MOTION FOR DEFAULT JUDGMENT FOR FAILURE TO ANSWER and OPPOSITION TO EXTENSION OF TIME** has been served on Applicant's counsel, at the following addresses of record, by first class mail, postage prepaid, this 16th day of June 2014:

Applicant's Counsel

Elizabeth Oliner

Oliner Law

345 Grove Street, 2nd floor

San Francisco, CA 94102

Daniel J. Holmander

From: Daniel J. Holmander
Sent: Monday, December 16, 2013 6:39 PM
To: 'phirschman@sheridanross.com'
Subject: Letter for Skinny Pineapple, Inc. - Withdrawal of The Farm
Attachments: CeaseDesistWithdrawalTheFarm.pdf; ExtensionofTime.pdf; Farmaesthetics.pdf; TheFarm.pdf

Please find attached a letter directed to Skinny Pineapple, Inc.

Sincerely,

Daniel Jon Holmander
Partner
Barlow, Josephs & Holmes Ltd.
Owen Bldg
101 Dyer St Ste 501
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